REMARKS

I. STATUS OF THE CLAIMS

Claims 1-5 and 9-19 are currently pending in the application. It is respectfully submitted that the rejection is traversed.

II. ENTRY OF RESPONSE UNDER 37 C.F.R. §1.116

Applicants request entry of this Rule 116 Response and Request for Reconsideration because the amendments were not earlier presented because the Applicants believed in good faith that the cited prior art did not disclose the present invention as previously claimed

The Manual of Patent Examining Procedures sets forth in §714.12 that "[a]ny amendment that would place the case either in condition for allowance or in better form for appeal may be entered." Moreover, §714.13 sets forth that "[t]he Proposed Amendment should be given sufficient consideration to determine whether the claims are in condition for allowance and/or whether the issues on appeal are simplified." The Manual of Patent Examining Procedures further articulates that the reason for any non-entry should be explained expressly in the Advisory Action.

III. CLAIMS 1, 3-9, 11-14, AND 16-19 ARE REJECTED UNDER 35 USC 102(b) AS BEING ANTICIPATED BY KOSAKA (6,038,062)

Claim 1 recites:

> a total power measuring unit measuring a total light power of the branched light; and
>
> a control unit controlling the optical amplifying unit based on the total light power measured by the specific wavelength measuring unit and the total power measuring unit,
>
> wherein the control unit controls the optical amplifying unit such that the gain of the total light power remains constant. (Emphasis added)

Kosaka is directed to an optical amplifier. According to Kosaka, the optical amplifier can control individual wavelength outputs without affecting signal transmission even when the number of signal wavelengths subject to multiplexing changes and an optical transmission system using the optical amplifier.

Kosaka states that by using a non-dispersion shifted fiber for the trunk line system 9, the difference between the input levels, fed to the optical amplifier, of the probe light beam and signal light beams can be mitigated. Further, by taking measures in which the wavelength

distance is made to be narrower between one of the signal light beam wavelengths λ_1 and the λ_p than between other signal light beams, the difference between the input levels, fed to the optical amplifier, of the probe light and signal light beams can be mitigated. *See* col. 16, lines 45-63.

Kosaka relates to controlling the gain of the probe light beam by keeping the output light signal level constant. As a result, if the input level of the probe light beam changes, the gain of the probe light beam changes, and Kosaka consequently fails to keep the gain of the light signal constant.

Kosaka does not teach or suggest "a control unit controlling the optical amplifying unit based on the total light power measured by the specific wavelength measuring unit and the total power measuring unit, wherein the control unit controls the optical amplifying unit such that the *gain* of the total light power remains constant." (Emphasis added)

Accordingly, claims 1 and 9 are not anticipated by Kosaka and patentably distinguish over the cited art.

Claims 3-5 depend from claim 1 and claims 11-13 depend from claim 9. Claims 3-5 and 11-13 include all of the features of their respective claims that they depend from, plus additional features that are not taught or suggest by the cited art and therefore patentably distinguish over the cited art.

Claim 14 recites "a control unit controlling the optical amplifying units based on the total light power measured by the specific wavelength measuring units and the total power measuring unit, wherein the control unit controls the optical amplifying unit such that the gain of the total light power remains constant." (Emphasis added)

Accordingly, claim 14 is not anticipated by Kosaka and patentably distinguishes over the cited art. Claims 16-18 depend from claim 14 and include all of the features of that claim, plus additional features that are not taught or suggest by the cited art and therefore patentably distinguish over the cited art.

Claim 19 recites "a control unit controlling an optical amplifying unit based on light power of a specific wavelength and light power of the branched light, wherein the control unit controls the optical amplifying unit such that the gain of the total light power remains constant." (Emphasis added). Accordingly, claim 19 is not anticipated by Kosaka and patentably distinguishes over the cited art.

IV. CLAIMS 2, 10, AND 15 ARE REJECTED UNDER 35 USC 103(a) AS BEING UNPATENTABLE OVER KOSAKA IN VIEW OF FUJITA (6,008,935)

Claim 2 depends from claim 1, claim 10 depends from claim 9, and claim 15 depends from claim 14. Claims 2, 10, and 15 include all of the features of their respective claims that they depend from, plus additional features that are not taught or suggested by the cited art and therefore patentably distinguish over the cited art. Furthermore, nothing has been found or cited in Fujita that cure the deficiencies in terms of Kosaka.

V. CONCLUSION

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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